

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

CASE FILE NO: 08-04735 (RHK/JSM)

LYON FINANCIAL SERVICES, INC.,  
d/b/a US BANCORP MANIFEST  
FUNDING SERVICES,

Plaintiff,

v.

RINKU M. DUTT, individually and d/b/a  
RINKU M. DUTT, M.D., LUNA EYE  
CENTERS OF GREENSBURG, PC, and  
MAZIN YALDO,

Defendants.

And

RINKU M. DUTT, individually and d/b/a  
RINKU M. DUTT, M.D.,

Cross-Claim Plaintiff,

v.

MAZIN YALDO,

Cross-Claim Defendant.

And

RINKU M. DUTT, individually and d/b/a  
RINKU M. DUTT, M.D.,

Third Party Plaintiff,

v.

BANNER PHYSICIANS CAPITAL and  
ALEX PUJARI,

Third Party Defendants.

**PLAINTIFF'S STATEMENT AS TO  
THIRD-PARTY DEFENDANT'S  
BANNER PHYSICIAN'S CAPITAL  
MOTION TO DISMISS OR IN  
ALTERNATIVE TRANSFER VENUE**

The Plaintiff takes no position as to Third Party Defendant Banner Physician's Capital's, Motion to Dismiss or in the alternative Transfer Venue (Document No. 13) which was filed on September 19, 2008 and is scheduled for a hearing on December 4, 2008.

However, to the extent that Third-Party Defendant Banner Physician's Capital in its memorandum has called into question the enforceability of the forum selection clause contained in the equipment finance agreement in this matter, the Plaintiff would direct the Court to the litany of cases that have consistently upheld forum selection clauses similar to the one in question. *See Lyon Fin. Servs., Inc. v. bioMerieux, Inc. et. al.*, No. 07-724, (DWF/SRN), 2007 WL 2123564 (D.Minn. July 20, 2007), *Lyon Fin. Servs., Inc. v. Nowobilska Medical Center, LTD*, No. 05-1820 (DWF/SRN), 2005 WL 3526682 (D. Minn. Dec. 22, 2005); *Lyon Fin. Servs., Inc. v. Century 21 Hacienda Realty*, No. 02-3817 (DWF/SRN), 2003 U.S. Dist. LEXIS 24560 (D. Minn. Aug. 29, 2003); *Lyon Fin. Servs., Inc. v. Will H. Hall & Sons Builders, Inc.*, No. 04-04383 (ADM/AJB) 2005 WL 503371 (D.Minn. Mar. 4, 2005); *Lyon Financial Services, Inc. v. Phoenix Skin Dermatology Place, PC*, C3-01-1609 (Minn. Ct. App. 2002); *Lyon Financial Services, Inc. v. Film Funding, Inc.*, C4-00-1978 (Minn. Ct. App. 2001).

In addition, Plaintiff believes it is worth noting that *Lyon Financial Services, Inc. v. PowerNet, Inc.*, No. 01-1089 (JRT/FLN), 2001 WL 1640099, (D. Minn. Nov. 19, 2001) was based on the “unique facts and circumstances” of the case. *PowerNet*, at 4.

Dated: November 13, 2008

**LYON FINANCIAL SERVICES,  
INC. D/B/A USBANCORP BUSINESS  
EQUIPMENT FINANCE GROUP**

BY: /s/ Troy C. Kepler

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